

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5721 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SOMALAL W TRIVEDI

Versus

STATE OF GUJARAT

Appearance:

None present for Petitioner

MR SR DIVETIA for Respondents No. 1, 2

MR SN SHELAT for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 27/06/97

ORAL JUDGEMENT

1. The petitioner has challenged by this Special Civil Application the order dated 2-8-1989 of the respondent No.2 under which his services have been terminated.

2. The counsel for the petitioner challenging the validity, legality and correctness of the aforesaid order

raised following contentions:

(i) The order dated 2-8-1989 has been made in breach of the principles of natural justice and hence, void-ab-initio.

(ii) The order of termination of the services of the petitioner has been made without following the mandatory procedure as required under sec.51A of the Gujarat University Act, 1949.

(iii) The impugned order is discriminatory and violative of Article 14 of the Constitution. The other teachers who were similarly situated, their services have not been terminated whereas the petitioner has been chuck out.

3. On the other hand, the counsel for the respondents contended that the petitioner has been given an honorary appointment for fixed term. The petitioner was appointed on temporary basis for a period of three years initially and thereafter the term of appointment has been extended from time to time, and it is a case where the term of appointment has not been extended, and not a case of termination as sought to be contended by the petitioner's counsel. It has further been contended that it is a case of fixed term appointment, and as such, it comes to an end by efflux of time and no notice or opportunity of hearing is required to be given to the petitioner. So far as the contention of the counsel for the petitioner regarding the applicability of violation of provisions of sec.51A of the Gujarat University Act, 1949 (hereinafter referred to as the Act, 1949) is concerned, the counsel for the respondent contended that these provisions are not applicable to the case of the petitioner as he was serving in a Government Medical College. Reference in this respect has been made to the provisions of sec.59A of the Act, 1949.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

5. Annexure 'D' on the record of the Special Civil Application is the order dated 8th February, 1979 of the Government of Gujarat under which the petitioner has been appointed as Honorary Assistant Professor in the Gastroenterology Surgery at Civil Hospital, Ahmedabad on temporary basis for a period of three years. The petitioner has not produced on the record the subsequent orders of extension of the term of services from time to time, but the respondents in reply to the Special Civil

Application have stated that the services of the petitioner were extended from time to time and ultimately by Government Resolution dated 31st March, 1989, the services of the petitioner were continued upto 31st July, 1989. So, the last extension of the term of the services of the petitioner was till 31st July, 1989. The rejoinder to the reply has been filed by the petitioner and he has not controverted this averment made by the respondents. So, it is a case of the appointment of the petitioner on temporary basis for a fixed term which has been extended from time to time and lastly, it has been extended upto 31st July, 1989. The term of the appointment of the petitioner thereafter was not extended from 31st July, 1989 and the petitioner has been relieved from the post. It is a settled law that a temporary appointment does not confer any right to employee/officer to continue to hold the post. The temporary appointment does not culminate automatically in a permanent appointment merely by working for a long period on a temporary post. A temporary Government servant does not become permanent unless he acquires that capacity by force of any rule or is declared as permanent servant. The learned counsel for the petitioner is unable to cite any provision from the rules framed under Article 309 of the Constitution or any other Government Resolution or circular which provides that a temporary Assistant Professor who has been given appointment for a fixed term by virtue of working for a long period automatically becomes permanent. As stated earlier, it is a case of fixed term appointment and it has come to an end by efflux of time. The respondents are not under any obligation to extend the term of appointment of the petitioner. If the respondents are not satisfied with the services of the petitioner then they have all the right not to extend the term of his temporary appointment.

6. The Division Bench of this Court, (Coram: Hon'ble Chief Justice B.N. Kirpal, CJ as he then was and H.L. Gokhale, J) in the case of Bhanmati Tapubhai Muliya vs. State of Gujarat reported in 1995 (2) GLH 228 held that a temporary appointment made for a fixed term comes to an end by efflux of time, and in such cases, even the order of termination is not required to be passed. In the case aforesaid, the Division Bench has considered the two Supreme Court decisions where one of which is of a Medical Doctor who was also appointed on temporary basis and worked for about nine years and her services were terminated and that termination was held to be valid. The case of the petitioner is also of a Honorary temporary appointment for a fixed term. The Hon'ble

Supreme Court in the case of M.P. Hasta Shilpa Vikas Nigam Ltd. vs. Devendra Kumar Jain & Ors. reported in JT 1995 (1) SC 198 held that while terminating the services of a temporary Government servant, the principles of natural justice are not required to be followed. No notice or opportunity of hearing is required to be given to the petitioner as his appointment was only a temporary fixed term appointment.

7. So far as the contention of the counsel for the petitioner that the provisions of sec.51A of the Act, 1949, have not been complied with while terminating the services of the petitioner is concerned, it is suffice to say that the petitioner has deliberately concealed an important fact from this Court. The petitioner is a Doctor and when he has referred sec.51A of the Act, 1949, it is difficult to accept that he would not have noticed the provisions of sec.59A of the said Act. Despite of the provisions of sec.59A of the Act, 1949, a plea has been raised by the petitioner, which is certainly an attempt on the part of the petitioner to misguide the Court. When sec.59A of the Act, 1949, specifically provides that the provisions of sec.51A of the Act, 1949, are not applicable to the Government Colleges, taking up this plea by the petitioner is certainly unfair and unjustified. In view of the provisions of sec.59A of the Act, 1949, this contention of the counsel for the petitioner is wholly devoid of any substance.

8. So far as the contention of discrimination raised by the counsel for the petitioner is concerned, it is suffice to say that it is also devoid of any substance. The case of the petitioner is of a temporary appointment for a fixed term and in case the term of the appointment has not been extended, no exception can be taken to the same. It is a case of temporary appointment and extension of the term thereof has to be considered with reference to the facts of the case, and in such matters, there cannot be any case of discrimination.

9. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated. No order as to costs.

zgs/-